

PART 633—PROTESTS, DISPUTES, AND APPEALS

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AUTHORITY: 40 U.S.C. 486(c); 22 U.S.C. 2658.

SOURCE: 53 FR 26173, July 11, 1988, unless otherwise noted.

Subpart 633.1—Protests

633.102 General.

All communications relative to protests filed with the General Accounting Office (GAO) shall be coordinated with the Office of the Legal Adviser.

[53 FR 26173, July 11, 1988, as amended at 64 FR 43628, Aug. 11, 1999]

633.103 Protests to the agency.

(d)(4) The independent review as described in FAR 33.103(d)(4) shall be performed by the Departmental Competition Advocate.

[64 FR 43628, Aug. 11, 1999]

633.104 Protests to GAO.

(a) General procedures. The Office of the Assistant Legal Adviser for Buildings and Acquisitions (L/BA) coordinates the response of the Department of State to protests filed at the GAO. Contracting activities shall consult L/BA for guidance before taking any actions in response to a protest to GAO.

[64 FR 43628, Aug. 11, 1999]

Subpart 633.2—Disputes and Appeals

633.203 Applicability.

The Procurement Executive is the agency head for the purposes of FAR 33.203(b).

633.214–70 Alternative dispute resolution.

(a) *Policy.* The Department's goal is to resolve contract disputes before the issuance of a contracting officer's final decision under the Contract Disputes Act. Contracting officers shall consider all possible means of reaching a negotiated settlement, consistent with the Government's best interests, before issuing a final decision on a contractor claim under the process outlined in FAR 33.206 through 33.211.

(b) *When to use ADR—(1) Factors favoring ADR.* Contracting officers should consider using ADR in those cases where:

(i) Only facts are in dispute;

(ii) The facts are clearly not favorable to the Government;

(iii) The anticipated costs (in time and money) are less than the anticipated costs of litigation;

(iv) Settlement attempts have reached an impasse;

(v) ADR techniques have been used successfully in similar situations;

(vi) There is a need for independent expert analysis; or,

(vii) The claim has merit but its value is overstated.

(2) *Factors disfavoring ADR.* The following circumstances do not favor use of ADR:

(i) Cases involving disputes controlled by clear legal precedent, making compromise difficult;

(ii) The resolution will have a significant impact on other pending cases or on the future conduct of Department business;

(iii) The dispute is primarily over issues of law;

(iv) A decision of precedential value is needed;

(v) A significant policy question is involved;

(vi) A full public record of the proceeding is important;